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Examiner: Blair M. Johnson
Group Art Unit: 3634

Restriction Requirement

The Examiner has required restriction between an alleged species represented in Figure 5, which comprises an automatically-closing patio-type sliding screen door, which is closed by a counterweight suspended by a cable, and having a closing force adjuster which slows the movement of the door by exerting a frictional force on the cable, and an alleged species illustrated in Figure 8, which comprises an automatically-closing patio-type sliding screen door, which is closed by a counterweight suspended by a cable, and having a closing force adjuster which slows the movement of the door by exerting a frictional force on the counterweight. The restriction requirement is respectfully traversed as being improper.

Both alleged species have the unifying concept of an automatically-closing patio-type sliding screen door, which is closed by a counterweight suspended by a cable, and having a closing force adjuster which slows the movement of the door by exerting a frictional force to a moving component of the door closing mechanism, and are not independent and distinct. Restriction may be required if two or more "independent and distinct" inventions are claimed in one application. 35 U.S.C. §121. According to the Manual of Patent Examination Procedure §802.01, "independent" means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect. "Distinct" means that two or more subjects as disclosed are related, for example, as a combination and a part or subcombination thereof, a process and an apparatus for its practice, a process and a product made, etc., but are capable of separate manufacture, use, or sale as claimed, and are patentable over each other.

The alleged species are dependent, not independent, because they both have the same modes of operation, functions, and effects, and are therefore related. The species have the same patio-type sliding screen door, the same counterweight and cable closing mechanism, the same mode of operation (i.e. closure slowed by the exertion of a frictional force on the closure mechanism), the same function (i.e. the controlled closing of the door), and the same effect. The only difference between the two alleged species is whether the frictional force is applied to the cable or the counterweight.

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A search of the prior art would not be duplicative and Applicant is at a loss as to how the Examiner would be burdened by having to examine all the groups of claims since they relate to such intertwined subject matter. However, Applicant confirms a provisional election with traverse of the alleged species illustrated in Figure 8.

Election of Species

Applicant provisionally elects the species illustrated in Figure 8, claims 1-12, 17-26, 28-39, and 44-53, with traverse.

As the Examiner is undoubtedly aware, 37 CFR 1.141(a) states:

Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

See, also, Manual of Patent Examining Procedure, §§806.04(a), 806.04(h). The Examiner has identified claims 1 and 28 as generic. As the Examiner is also undoubtedly aware, MPEP §809.02(c) states:

(B) When a generic claim is subsequently found to be allowable, and not more than a reasonable number of additional species are claimed, treatment shall be as follows:

(1) When *all* claims to each of the additional species are embraced by an allowable generic claim as provided by 37 CFR 1.141, applicant must be advised of the allowable generic claim and that **claims drawn to the nonelected species are no longer withdrawn** since they are fully embraced by the allowed generic claim.

(Emphasis added.)

Upon the allowance of one of the generic claims, Applicant will be entitled to consideration of dependent claims 13-16, 27, 40-43, and 54 as drawn to a species which is non-elected as a result of the restriction requirement. See, 37 CFR 1.146, and Manual of Patent Examining Procedure, §809.02(a).

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CONCLUSION

If there are any outstanding issues which the Examiner feels may be resolved by way of telephone conference, the Examiner is cordially invited to contact the undersigned to resolve these issues. Early notification of allowability is respectfully requested.

Respectfully submitted,

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